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No. 74-744

In the Supreme Court of the United States

OCTOBER TERM, 1974

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

SAMUEL SHAPIRO AND BELLA SHAPIRO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONER

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OPINIONS BELOW

The order of the district court (Pet. App. A 1A–2A) is not reported. The opinion of the court of appeals (Pet. App. B 3A–17A) is reported at 499 F. 2d 527.

JURISDICTION

The judgment of the court of appeals was entered on May 15, 1974 (Pet. App. C 18A–19A), and a petition for rehearing was denied on July 17, 1974 (Pet. App. D 20A–21A). By order dated October 17, 1974, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including December 14, 1974. The petition for a writ of certiorari was

filed on December 13, 1974, and was granted on February 18, 1975. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

The Anti-Injunction Act (Section 7421(a) of the Internal Revenue Code of 1954) prohibits a suit in any court by any person for the purpose of restraining the assessment or collection of any tax.

The question presented is whether the Commissioner of Internal Revenue is required to prove his good faith and the facts upon which a tax assessment is based before the bar of the Anti-Injunction Act is applicable.

STATUTES INVOLVED

The pertinent provisions of Sections 6211, 6212, 6213, 6331, 6861, and 7421 of the Internal Revenue Code of 1954 (26 U.S.C.) are set forth in the Appendix, *infra,* pp. 37–40.

STATEMENT

1. Respondent[1] is a citizen of Israel who entered the United States in 1970. Some time after his arrival in this country, respondent was indicted in Israel for securities fraud. The Israeli government sought his extradition, and respondent contested the extradition request in the United States District Court for the Southern District of New York. The district court found him extraditable (352 F. Supp. 641, on review

[1] References to "respondent" are to Samuel Shapiro. His wife, Bella Shapiro, is a party only because of her co-ownership of property subject to federal tax liens.

sub nom. Shapiro v. *Ferrandina,* 355 F. Supp. 563) and the Second Circuit affirmed (478 F. 2d 894). Respondent filed a petition for a writ of certiorari (No. 72–1701), which he agreed to withdraw and to surrender voluntarily for extradition after receiving assurances from the Israeli government that he could be released on bail pending his trial on the securities fraud charges (Pet. App. B 4A–5A).

The agreed extradition date was December 9, 1973. On December 6, 1973, the Commissioner of Internal Revenue made jeopardy assessments of income taxes for 1970 and 1971 against respondent in accordance with Section 6861 of the Internal Revenue Code of 1954.[2] The assessments aggregated $92,726.41. On the same date, the Internal Revenue Service filed tax liens against respondent and served notices of levy upon various banks in the State of New York where respondent maintained accounts or had safe deposit boxes (Pet. App. B 4A–5A).

The Internal Revenue Service took these actions after completion of an income tax investigation of respondent that had commenced on September 24, 1973 (A. 128). Although the Internal Revenue Service was aware that an extradition proceeding was pending against respondent, the first time that the revenue agent assigned to the case was advised that any date for respondent's departure had been set was on November 28, 1973 (A. 129–130).

[2] In accordance with the procedures set forth in Rev. Proc. 60–4, 1960–1 Cum. Bull. 877, the jeopardy assessments were approved by the responsible District Director of Internal Revenue (A. 130).

Respondent thereupon commenced this action [3] in the United States District Court for the District of Columbia to require the Commissioner to lift the notices of levy [4] and to prohibit the government from executing the extradition warrant pending resolution of the tax dispute (A. 8–16). Respondent moved for a temporary restraining order (A. 17–19), in support of which he submitted an affidavit denying that he owed any additional taxes (A. 20–21). After a hearing (A. 30–70), the district court granted respondent a temporary restraining order (A. 71–72). The district court held a subsequent hearing on respondent's motion for a preliminary injunction (A. 95–127).

Two days later, on December 21, 1973, the Commissioner mailed a notice of deficiency to respondent, pursuant to Sections 6861(b) and 6212(a) of the Code. The notice of deficiency advised respondent that the 1970 assessment was based upon unexplained bank deposits by him of $18,000, and that the 1971 assessment was based upon unreported income of $137,280 from respondent's activities as a dealer in narcotics, specifically from sales of hashish (Pet. App. B 5A–6A; A. 132–136).

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[3] The present case was styled *Samuel Shapiro and Bella Shapiro* v. *Secretary of State, et al.* in the courts below because of the question relating to respondent's extradition. Since the extradition is no longer at issue, the Commissioner of Internal Revenue is the only petitioner.

[4] On October 11 and 15, 1974, the Internal Revenue Service served new notices of levy against respondent. Consequently, his property remains subject to the distraint procedures provided by Section 6331 of the Code.

At a final hearing held on December 21, 1973 (A. 137–160), at which one of the counsel for respondent stated to the court that respondent had informed another of his counsel that the Commissioner's determination of narcotics dealing was false (A. 138), the district court dismissed respondent's suit for injunctive relief (Pet. App. A 1A–2A). It held that it lacked jurisdiction to enjoin execution of the extradition warrant. The district court further concluded that the Anti-Injunction Act barred respondent's action to enjoin the assessment and collection of taxes because it could not find: (1) that under no circumstances could the government prevail on the merits of its claim; and (2) that respondent was threatened with irreparable injury for which there was no adequate legal remedy, since he could seek a redetermination of the deficiencies in the Tax Court (A. 153–155).

Shortly thereafter, on January 3, 1974, pursuant to Section 6213(a) of the Code, respondent filed a petition in the Tax Court for a redetermination of the deficiencies set forth in the Commissioner's statutory notice (*Shapiro* v. *Commissioner,* No. 178–74). That proceeding (A. 161–162) is presently pending.

On the same day (May 15, 1974) that this Court announced its decisions in *Bob Jones University* v. *Simon,* 416 U.S. 725, and *Alexander* v. *"Americans United" Inc.,* 416 U.S. 752, the court of appeals [5] re-

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[5] Upon his appeal to the court of appeals, respondent filed in this Court an application for a continuation of the court of appeals' stay of the extradition order pending oral argument and decision by the court of appeals (No. A–788). On May 16, 1974, the day following the decision by the court of appeals,

versed and remanded the case for an examination of the facts upon which the Commissioner based his tax assessment against respondent.[a]

In so remanding, the court of appeals concluded that "the District Judge * * * should not have dismissed the complaint on the bare record before him" and observed that "the District Judge might have allowed Shapiro an opportunity to discover more evidence, or he could have compelled the Commissioner to provide factual support for the asserted deficiency" (Pet. App. B 13A). It further stated that "[W]hile it is not probable that the Government created the deficiency out of whole cloth, it is equally true that '[the Government's] burden [to show good faith] is not met by mere "protestations of good faith and conclusory statements of plaintiff's tax liability * * *"'" (Pet. App. B 16A).

the Chief Justice dismissed the application as moot. Although respondent contended (A. 13–14), and the court of appeals was of the view, that the jeopardy assessment and levies would cause him irreparable injury by freezing funds that he intended to use to post bond in Israel to avoid incarceration (Pet. App. B 17A), respondent was in fact released on bond in Israel upon his extradition without the use of the funds frozen by the Service's levies. His release on bond was allegedly made possible because the Israeli government reduced the amount previously requested as security for his appearance, and because a relative in Israel agreed to provide her apartment as partial security for his appearance. (See Appellants' Opposition to Motion to Stay Mandate filed in the court of appeals on July 30, 1974, p. 4.)

[a] The court of appeals also affirmed the district court's dismissal of respondent's suit to enjoin the execution of the extradition warrant. However, the extradition is not at issue here.

2. Subsequent to the decision by the court of appeals, the district court ordered the government to "file with the Court and serve on the Plaintiffs * * * the factual submission upon which the government seeks to rely as providing a factual foundation that Plaintiff Shapiro was a narcotics dealer and that the government's calculation of the deficiency has a rational basis, so that the Court can determine if the claim is 'entirely excessive, arbitrary, capricious, and without factual foundation'" (Order of October 29, 1974).

Pursuant to the district court's order, the government submitted an affidavit of the revenue agent who investigated respondent's income tax liabilities (see n. 7, *infra*, p. 10). The affidavit stated that the basis for the deficiencies determined by the Commissioner was as follows:

(*a*) There was no record that Samuel Shapiro had filed an income tax return for 1970.

(*b*) Samuel Shapiro had filed an income tax return for 1971 reporting no tax liability based upon $1,600 in adjusted gross income, consisting of $2,600 miscellaneous income from private tutoring, and net short-term losses from commodity transactions of $1,450 (limited to $1,000 in computing taxable income).

(*c*) Deposits were credited to two acounts in the name of Samuel Shapiro at the First National City Bank, New York, Nos: 04993564 and 05008773, of $18,000 in 1970 and $36,735 in 1971.

(*d*) Samuel Shapiro paid more than $3,000 in cash for the purchase of an automobile in early 1972.

(*e*) Information available to the Internal Revenue Service indicated that early in 1973 Samuel Shapiro paid more than $40,000 in cash for a home the price of which was $60,000.

(*f*) Information supplied to the Internal Revenue Service indicated that Samuel Shapiro had been smuggling into the United States substantial amounts of an illegal substance, hashish, every six days from Israel, presumably for resale within the United States, and that Samuel Shapiro was dealing in hashish, during 1971.

(*g*) The 1971 bank deposits referred to in subparagraph (*c*) above included money received from an individual since convicted of selling hashish, who stated that the payments were for hashish Samuel Shapiro supplied to him as follows:

April 19, 1971	$2,000
April 23, 1971	2,300
May 6, 1971	2,000
May 11, 1971	1,500
June 8, 1971	1,500
August 18, 1971	5,600

(*h*) Information available to the Internal Revenue Service indicated that the known practice in hashish trafficking was to deal in full kilos (kilograms), equal to 2.2 pounds; that during 1971 the retail price of hashish was $1,760 to $1,980 per pound, or $2,992 to $4,356 per kilo; that the wholesale cost to a dealer would approximate $2,350 per kilo; and the common practice in hashish dealing was to receive payment in two parts—the first for cost and the second for profit.

(*i*) On the basis of the information set forth in subparagraphs (*g*) and (*h*) above, the revenue agent

concluded that during 1971 Samuel Shapiro was dealing in at least two kilos of hashish per week, and that his taxable profit therefrom was $137,280, computed as follows:

Selling price	$7,340
Less cost	−4,700
Weekly profit	2,640
1971 profit (52 weeks)	$137,280

(*j*) The revenue agent also concluded that the unexplained deposits of $18,000 during 1970 were taxable income (affidavit of November 8, 1974, of Revenue Agent Richard A. Conde, pp. 2–4).

At a hearing held by the district court on November 12, 1974, respondent submitted two affidavits (which had been filed in the Tax Court) denying that he was or ever had been a dealer in narcotics. Respondent's affidavits further stated that his 1971 income tax return was correct. Respondent also submitted an affidavit of Rachel Laub, a resident of Switzerland, which stated that at respondent's request in 1970, she held for him in safekeeping $50,000 in cash and approximately 18 to 20 kilos of gold bars. That affidavit further stated that at respondent's request, she transmitted the cash to him in 1971, and the proceeds of the sale of the gold bars ($32,000 and $35,000) in 1971 and 1972, respectively (affidavits of Samuel Shapiro and Rachel Laub, dated February 14, 1974, and December 11, 1973).

At the conclusion of the hearing on remand, the district court ruled that the revenue agent's affidavit was insufficient to invoke the bar of the Anti-Injunc-

tion Act. The court stated to counsel for the government as follows: "I think I am going to have to have some more information. Otherwise, I don't think this affidavit is sufficient. Unless you are willing to submit the informant to examination by the court and the information upon which the affidavit was based by [the revenue agent], I am not fully satisfied, in all candor * * * I just don't feel that this affidavit is sufficient for the court to overcome what the Court of Appeals said the government had to do" (Tr. of Proceedings of November 12, 1974, pp. 71–72).[7]

On November 18, 1974, the government advised the district court that it had decided not to submit additional documentary evidence or testimony of its confidential informants at that time for *in camera* examination or otherwise.[8]

[7] As noted in the petition for a writ of certiorari (p. 9, n. 6), the record transmitted by the court of appeals does not include any of the material with respect to the remand proceeding. We have therefore lodged with the Clerk copies of the October 29, 1974 order of the district court, affidavits filed by the parties, and the transcript of the hearing held by the district court on November 12, 1974.

[8] When the government filed its petition for a writ of certiorari on December 13, 1974, it also moved in the district court for a stay of proceedings pending the disposition of the case by this Court. On December 18, 1974, the district court denied the government's motion for such a stay (Br. in Opp. App. C 4a). However, on January 3, 1975, the court of appeals granted the government's motion for a stay of further proceedings in the district court and further ordered, *sua sponte*, that the clerk of the district court return the certified copy of the court of appeals' judgment pending consideration by this Court of the petition for a writ of certiorari (Br. in Opp. App. A 1a; App. B 2a).

At a hearing held on December 17, 1974,[9] the district court reaffirmed its conclusion that the revenue agent's affidavit did not "provide a rational factual basis for the assessment and levy in this case, which would be sufficient to oust this court's jurisdiction [under the Anti-Injunction Act]" (Tr. 2–3). As a result, the district court ordered that the parties be permitted to engage in pretrial discovery (Br. in Opp. App. C 3a–4a).

SUMMARY OF ARGUMENT

A

The federal Anti-Injunction Act, 26 U.S.C. 7421 (a), which was enacted over a century ago, provides that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person * * *." Last Term in *Bob Jones University* v. *Simon,* 416 U.S. 725, this Court reaffirmed the narrowly limited exception to the statutory prohibition on injunctions against tax assessments which it originally announced in *Enochs* v. *Williams Packing Co.,* 370 U.S. 1. In that case, the Court unanimously held that a taxpayer could obtain an injunction against assessment or collection of taxes only if he satisfied a two-fold test: First, he must show that "it is clear that under no cir-

[9] We are lodging with the Clerk a copy of the transcript of the hearing held by the district court on December 17, 1974.

cumstances could the Government ultimately prevail" on the merits of its legal claim; secondly, he must show that "equity jurisdiction otherwise exists" because of the threat of irreparable injury for which there is no adequate legal remedy (370 U.S. at 7).

Respondent's suit comes within the literal bar of the Anti-Injunction Act since it sought to restrain the "assessment or collection of any tax * * *." The court of appeals, however, reversed the district court's dismissal of respondent's suit and remanded the case for a further hearing. In so remanding, the court of appeals concluded that given respondent's implicit denial of liability for the amounts assessed and of the determinations in the Commissioner's notice of deficiency, the district court should not have dismissed the complaint on the bare record before him. In so holding, the court imposed upon the Commissioner the

burden of proving his good faith and the facts upon which the tax assessment was based before the bar of the Anti-Injunction Act would have been applicable.

B

The remand by the court of appeals is contrary to *Williams Packing* and *Bob Jones University*. While this Court has created a limited exception to the Anti-Injunction Act, where a taxpayer demonstrates that under no circumstances can the government prevail on the merits of its legal claim and where he is otherwise entitled to equitable relief, the burden to meet the two-fold *Williams Packing* test rests on the taxpayer.

Williams Packing does not suggest that once the taxpayer simply denies his liability for an additional assessment, the Commissioner is required to come forward in an injunctive action with evidence of his good faith and to prove the facts upon which his assessment is based. As the Court there observed, "the Act prohibits suits for injunctions barring the collection of federal taxes when the collecting officers have made the assessment and claim that it is valid" (370 U.S. at 8). Similarly, in *Bob Jones University*, the Court flatly imposed the burden of proof upon the taxpayer

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by stating "that petitioner has not shown that the Service's action is without an independent basis in the requirements of the Code" (416 U.S. at 740). In the absence of such proof by the taxpayer, the Court held that the *Williams Packing* test had not been met, and that the bar of the Anti-Injunction Act was therefore applicable.

These statements by the Court that a tax assessment is presumed to have been made in good faith so as to be entitled to the protection of the Anti-Injunction Act are hardly fortuitous. They rest upon the well-established rule which is implicit in the *Williams Packing* test but which was ignored by the court of appeals that a tax assessment is presumptively valid and that the burden is upon the taxpayer to prove its invaldity. Thus, in a post-assessment collection action brought by the Commissioner, the taxpayer has the burden of proving that the assessment is erroneous if he is to avoid its execution by collection. Nothing in the nature of a taxpayer-initiated injunctive action supports the conclusion of the court of appeals that the Commissioner should be compelled to come forward in such a proceeding with evidence that his assessment was made in good faith and is correct. The same presumptions of good faith and correctness of a tax assessment that are applicable in a civil collection proceeding are equally applicable, if not more so, in a suit to enjoin assessment or collection. The burden of proof to establish the applicability of the

Williams Packing exception therefore rests squarely on the taxpayer.

C

The record in this case does not even suggest, much less support, the conclusion that under no circumstances would the government prevail on the merits of its claim under the *Williams Packing* test. The only evidence submitted by respondent to the district court during the first proceeding was a single affidavit which simply alleged that he was not liable for the additional amount assessed. This blanket denial of liability is insufficient to meet the *Williams Packing* test. Moreover, even after the Commissioner issued the notice of deficiency to respondent determining that he had unreported income from activities as a dealer in narcotics, respondent still failed to produce any evidence to establish that the assessment was without foundation. Thus, respondent has not even demonstrated that he would be likely to prevail, much less that "under no circumstances" would the government prevail on the merits of its claim. There was accordingly no basis for the further remand hearing. The court of appeals should have affirmed the district court's dismissal of the complaint.

The effect of the decision below has been to allow the simple denial of liability by a taxpayer to put the Commissioner's assessment "on trial" at a protracted injunctive proceeding in which the government would be forced to prove its good faith and the facts upon

which assessment was based. If the decision is permitted to stand, the litigation of every jeopardy assessment will be converted into an injunctive action at which the usual burden of proof rule applicable in federal tax litigation will be inverted. Such a radical departure from the rule of *Williams Packing* and *Bob Jones University* would, like the repudiated decisions of an earlier day, "simply revive the evisceration of the [Anti-Injunction] Act." *Bob Jones University* v. *Simon, supra,* 416 U.S. at 745–746.

ARGUMENT

THE COMMISSIONER OF INTERNAL REVENUE IS NOT REQUIRED TO PROVE HIS GOOD FAITH AND THE FACTS UPON WHICH A TAX ASSESSMENT IS BASED BEFORE THE BAR OF THE ANTI-INJUNCTION ACT IS APPLICABLE

A. THE ANTI-INJUNCTION ACT PROHIBITS THIS SUIT TO ENJOIN THE ASSESSMENT OR COLLECTION OF A TAX

1. The federal Anti-Injunction Act, 26 U.S.C. 7421 (a), provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person * * *." Here, after an investigation of respondent's tax liability for the years 1970 and 1971, the Commissioner of Internal Revenue concluded that assessment or collection of the deficiencies he determined would be jeopardized by delay. Acting pursuant to his authority under Sections 6861, 6201, and 6331 of the Code, the Commissioner made jeopardy assessments against respondent of $92,726.41, filed tax liens and served notices of levy upon respondent's property. Respondent thereupon brought this action requesting the court to "order the * * *

Commissioner of Internal Revenue and his agents to take all action necessary to lift the Notices of Levy * * *" (A. 15). The issue is whether the Commissioner of Internal Revenue is required to prove his good faith and the facts upon which his tax assessment is based before the jurisdictional bar of the Anti-Injunction Act becomes applicable.

The statutory prohibition against equitable relief in tax cases was enacted in 1867 [10] in order to prevent the wave of injunctive suits that had swept over the state taxation systems from similarly inundating the federal tax system. See *State Railroad Tax Cases,* 92 U.S. 575, 613–614. By foreclosing pre-enforcement judicial interference, the Act insures the government's ability to assess and collect taxes as expeditiously as possible. Within a decade after the passage of the Anti-Injunction Act, this Court recognized the congressional policy that underlay its passage, namely, that if the courts exercised general injunctive power with respect to the collection of taxes, the very existence of government would be threatened. See *Cheatham* v. *United States,* 92 U.S. 85, 89; *Snyder* v. *Marks,* 109 U.S. 189, 193–194. As the Court stated in the latter case, the statute declares that revenue officers "shall not be enjoined from collecting a tax claimed to have been unjustly assessed, when those officers, in the course of general jurisdiction over the subject matter in question have made the ~~assignment~~ ASSESSMENT and claim that it is valid" (109 U.S. at 194).

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[10] The statute originated as Section 10 of the Act of March 2, 1867, 14 Stat. 471, 475, and is now codified as Section 7421(a) of the Internal Revenue Code of 1954.

Thus, by foreclosing injunctive suits against the assessment or collection of taxes, the Act reflects a legislative policy that disputes between taxpayers and the Treasury be adjudicated solely within the statutory scheme prescribed by Congress.[11]

[11] While Congress has foreclosed injunctive actions to restrain the assessment and collection of taxes, it has established a statutory scheme which generally provides taxpayers with two methods of obtaining judicial review of tax disputes with the Treasury. First, with respect to income, estate, and gift taxes, a taxpayer may obtain review of a notice of deficiency without having to pay the disputed amount by filing a timely petition in the Tax Court. Sections 6212 and 6213 of the Code, Appendix, *infra*, pp. 37–38. Alternatively a taxpayer may pay the disputed amount of any type of tax, file a claim for refund, and obtain judicial review of the Commissioner's denial of the claim (or his failure to act on the claim within six months) by a suit for refund in a district court or in the Court of Claims. Sections 6532 and 7422 of the Code; 28 U.S.C. 1346 and 1491.

The existence of the Tax Court review procedure does not conflict with the government's fundamental right to assess and collect taxes prior to litigation. Prior to the establishment of the Board of Tax Appeals (now the Tax Court) by the Revenue Act of 1924, 43 Stat. 253, judicial review of a tax assessment could be obtained only in a refund suit. However, Section 274(d) of the Revenue Act of 1924, 43 Stat. 297, provided that if the Commissioner believed that the assessment or collection of a deficiency would be jeopardized by delay, he was required immediately to assess the tax at any time before or during the Tax Court proceedings. This statutory requirement has been continued in Section 6861 of the 1954 Code, Appendix, *infra*, pp. 39–40, and was employed against respondent because of his scheduled departure from the United States. Thus, the qualified prefatory exception in the Anti-Injunction Act—"[e]xcept as provided in sections 6212(a) and (c), [and] 6213(a) * * *" which relates to cases over which the Tax Court has jurisdiction—does not apply here because of the explicit statutory exception in Section 6213(a) for jeopardy assessments under Section 6861. See *Phillips* v. *Commissioner*, 283 U.S. 589, 596, n. 6.

Only last Term in *Bob Jones University* v. *Simon*, 416 U.S. 725, the Court again considered the Anti-Injunction Act. There, a tax-exempt organization brought suit to enjoin the Commissioner's revocation of its exempt status. In holding that such a claim was barred by the Act, the Court stated that the language of the statute—"no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court * * *"—"could scarcely be more explicit" (416 U.S. at 736). As the Court pointed out (*id.* at 742), this emphasis upon the literal terms of the Act was consistent with its earlier decisions during the first half century of the Act's existence which applied the stringent statutory language with literal force, without regard to the character of the tax, the nature of the challenge, or the effect of collection upon the taxpayer. See *Snyder* v. *Marks*, *supra*; *Pacific Steam Whaling Co.* v. *United States*, 187 U.S. 447; *Dodge* v. *Osborn*, 240 U.S. 118; *Bailey* v. *George*, 259 U.S. 16.[12]

Although several of the Court's subsequent decisions departed from a literal reading of the Anti-Injunction Act,[13] *Bob Jones University* reaffirmed the Court's adherence to the narrow exception announced in *Enochs* v. *Williams Packing Co.*, 370 U.S. 1, which "gave the Act almost literal effect" (416 U.S. at 737).

[12] In *Bailey* v. *George*, *supra*, the Court refused to enjoin the collection of a child labor tax despite the contention that the purpose of the tax was not raising revenue but regulating child labor. The Court rejected the taxpayer's claim for equitable relief notwithstanding its holding on the same day that the tax was unconstitutional. *Child Labor Tax Case*, 259 U.S. 20. See *Bob Jones University* v. *Simon*, *supra*, 416 U.S. at 740–741.

See also *Alexander* v. *"Americans United" Inc.*, 416 U.S. 752, 758. The unanimous opinion in *Williams Packing* was meant to be "the capstone of judicial construction of the Act * * * spell[ing] an end to a cyclical pattern of allegiance to the plain meaning of the Act, followed by periods of uncertainty caused by a judicial departure from that meaning, and followed in turn by the Court's rediscovery of the Act's purpose." *Bob Jones University* v. *Simon, supra,* 416 U.S. at 742.

In *Williams Packing,* the Court announced a limited exception to the statutory prohibition on injunctions against tax assessment or collection activities by the Treasury. In that case, it unanimously held that a taxpayer could obtain an injunction against assessment or collection of taxes only if he satisfied a two-fold test: first, he must show that "it is clear that under no circumstances could the Government ultimately prevail" on the merits of its legal claim; second, he must show that "equity jurisdiction otherwise exists" because of the threat of irreparable injury for which there is no adequate legal remedy (370 U.S. at 7).

There, the taxpayer sought an injunction against the collection of social security and unemployment taxes claimed by the Internal Revenue Service to be past due. The taxpayer asserted that collection of the taxes would cause it irreparable injury. However, because the record revealed that "the Government's claim of liability was not without foundation" (370

[13] See, *e.g.*, *Hill* v. *Wallace*, 259 U.S. 44; *Lipke* v. *Lederer*, 259 U.S. 557; *Regal Drug Corp.* v. *Wardell*, 260 U.S. 386; *Miller* v. *Standard Nut Margarine Co.*, 284 U.S. 498.

U.S. at 8), there was no need for the Court to determine whether a refund suit [14] provided the taxpayer with an adequate legal remedy.[15] No suit for an injunction could be maintained because it was not apparent "under the most liberal view of the law and the facts, [that] the United States [could] not establish its claim" (370 U.S. at 7).

2. The applicability of the *Williams Packing* exception to the Anti-Injunction Act is at issue in this case. In light of the relief requested by respondent that the court "order the * * * Commissioner of Internal Revenue and his agents to take all actions necessary to lift the Notices of Levy * * *" (A. 15), there can be no doubt that his suit comes within the literal bar of the Anti-Injunction Act since it plainly sought to restrain the "assessment or collection of any tax * * *." If the Commissioner's notices of levy were removed from re-

[14] Because *Williams Packing* involved employment (F.I.C.A. and F.U.T.A.) taxes over which the Tax Court has no jurisdiction, the opinion only referred to a refund suit. See 28 U.S.C. 1346 and Section 7422 of the Internal Revenue Code of 1954. This case, however, involves income taxes with respect to which the Tax Court has jurisdiction. In fact, respondent has filed a petition in the Tax Court for redetermination of the deficiencies at issue (A. 161–162).

[15] Although the Court in *Williams Packing* did not reach the question whether a refund suit was an adequate legal remedy, it held that an injunction suit "may not be entertained merely because collection would cause an irreparable injury, such as the ruination of the taxpayer's enterprise" (370 U.S. at 6). In so holding, the Court rejected the "extraordinary and exceptional circumstances" test of *Miller* v. *Standard Nut Margarine Co.*, 284 U.S. 498, a standard which the Court later characterized as an "evisceration of the [Anti-Injunction] Act." *Bob Jones University* v. *Simon, supra,* 416 U.S. at 746.

spondent's property in advance of litigating the merits of the controversy, there is a strong likelihood that collection would be defeated. This is the very situation that the Anti-Injunction Act was designed to remedy.

The court of appeals, however, reversed the district court's holding that the Act was applicable. Instead, it remanded the case to the district court to "obtain some evidence by which to judge whether the asserted deficiency was a tax or was so arbitrary and excessive as to be 'an exaction in the guise of a tax'" (Pet. App. B 16A). In so remanding, the court of appeals concluded that "the District Judge * * * should not have dismissed the complaint on the bare record before him" and observed that "the District Judge might have allowed Shapiro an opportunity to discover more evidence, or he could have compelled the Commissioner to provide factual support for the asserted deficiency" (Pet. App. B 13A). The court of appeals further stated that "[W]hile it is not probable that the Government created the deficiency out of whole cloth, it is equally true that '[the Government's] burden [to show good faith] is not met by mere "protestions of good faith and conclusory statements of plaintiff's tax liability"'" (*id.* at 16A).

The remand by the court of appeals is contrary to *Williams Packing* and *Bob Jones University*. While this Court has created a limited exception to the Anti-Injunction Act where a taxpayer demonstrates that under no circumstances can the government prevail on the merits of its claim, and where he is otherwise

entitled to equitable relief, the burden to meet the two-fold *Williams Packing* test rests squarely on the taxpayer. Thus, where, as here, the record is bare of any factual basis for the conclusion that the government would under no circumstances prevail on the merits of its claim, the complaint must be dismissed. The correct application of the *Williams Packing* test, to which we now turn, does not require the Commissioner to come forward with evidence of his good faith and to prove the facts upon which a tax assessment is based before the bar of the Anti-Injunction Act is applicable.

B. UNDER THIS COURT'S *WILLIAMS PACKING* EXCEPTION TO THE ANTI-INJUNCTION ACT, THE TAXPAYER BEARS THE BURDEN OF PROVING THAT UNDER NO CIRCUMSTANCES COULD THE GOVERNMENT PREVAIL ON THE MERITS OF ITS CLAIM

1. The court of appeals appears to have acknowledged (Pet. App. B 9A) that the statutory prohibition against assessment or collection of taxes is subject to the single limited exception created by this Court in *Enochs* v. *Williams Packing Co.*, 370 U.S. 1. As we have shown, that exception is applicable only when two conditions are met: (1) that under no circumstances could the government prevail on the merits of its legal claim; and (2) that the taxpayer is otherwise entitled to equitable relief because collection of the tax would cause irreparable injury. The court of appeals concluded that in order to determine whether the *Williams Packing* exception is applicable, the district court should conduct a wide-ranging factual inquiry in which the Commissioner must come forward with evidence of his good faith and in support of his tax assess-

ment.[16] It therefore remanded the case to the district court to conduct such an inquiry, at which it would allow "Shapiro an opportunity to discover more evidence, or * * * [compel] the Commissioner to provide factual support for the asserted deficiency" (Pet App. B 13A).

This disposition by the court of appeals is incompatible with *Williams Packing* and *Bob Jones University*. Those cases do not suggest that once the taxpayer simply denies his liability, the Commissioner is required to come forward in an injunctive action

[16] Although the focus of our argument is on the court of appeals' conclusion with respect to the "under no circumstances" part of the *Williams Packing* test, the court of appeals also erred in holding that respondent met the irreparable injury component of the *Williams Packing* test (Pet. App. B 17A). It based this conclusion upon the alleged fact that the tax levies froze funds respondent intended to use to post bond in Israel. But *Williams Packing* explicitly held that the bar of the Anti-Injunction Act may not be evaded "merely because collection would cause an irreparable injury, such as the ruination of the taxpayer's enterprise" (370 U.S. at 6).

Like *Bob Jones University*, this is not a case where respondent has no access to judicial review of the Commissioner's assessment. Indeed, he has commenced a proceeding in the Tax Court for a redetermination of the deficiencies at issue. The fact that respondent may be confined in Israel will not prevent him from presenting his case to the Tax Court. Pursuant to that court's rules, depositions may be taken in foreign countries and may be used at trial when the witness is unable to testify in person. See Rule 81(e)(2) and (i) of the Rules of Practice and Procedure of the United States Tax Court (January 1, 1974).

At all events, the remand proceedings have demonstrated that respondent was in fact released on bond in Israel upon his extradition without the use of any of the funds frozen by the Service's levies. See n. 5, pp. 5–6, *supra*. The assumption upon which the court of appeals premised its "irreparable injury" holding is therefore no longer valid.

with evidence of his good faith and to prove the facts upon which his tax assessment is based. Indeed, they support quite the opposite conclusion. As the Court observed in *Williams Packing*, "the Act prohibits suits for injunctions barring the collection of federal taxes when the collecting officers have made the assessment and claim that it is valid. *Snyder* v. *Marks*, 109 U.S. 189, 194" (370 U.S. at 8).

Similarly, in *Bob Jones University* v. *Simon, supra*, which upheld the dismissal of an injunctive suit brought by a taxpayer who attributed non-tax motives to the Commissioner's action, the Court flatly imposed the burden of proof upon the taxpayer by stating that "petitioner has not shown that the Service's action is without an independent basis in the requirements of the Code" (416 U.S. at 740). In the absence of such proof by the taxpayer, the Court stated that "[t]here is no evidence that [the Commissioner's position] does not represent a good-faith effort to enforce the technical requirements of the tax laws, and * * * we cannot say that its position has no legal basis or is unrelated to the protection of the revenue. That Act is therefore applicable" (*ibid.*).[17]

[17] There is nothing in the record that would support a conclusion that the tax assessments against respondent were anything other than "bona fide and potentially productive attempts to collect revenue." See *Iannelli* v. *Long*, 487 F. 2d 317, 318 (C.A. 3). The chronology of the tax investigation of respondent demonstrates that the Service did not attempt to delay the jeopardy assessments beyond the date of his extradition (A. 128–130). Thus, *Sherman* v. *Nash*, 488 F. 2d 1081 (C.A. 3), upon which respondent relies (Br. in Opp. 5, n. 3), is distinguish-

These statements by the Court that a tax assessment is presumed without further proof to have been made in good faith so as to be entitled to the protection of the Anti-Injunction Act are hardly fortuitous. They rest upon the well-established rule, which is implicit in the *Williams Packing* test but which the court of appeals ignored, that a tax assessment is presumptively valid and that the burden is on the taxpayer to prove its invalidity. See, *e.g., Wickwire* v. *Reinecke,* 275 U.S. 101, 105; *Lucas* v. *Structural Steel Co.,* 281 U.S. 264, 271; *Welch* v. *Helvering,* 290 U.S. 111, 115; and *Bull* v. *United States,* 295 U.S. 247, 260. As these decisions point out, the force of a tax assessment is analogous to a judgment which has the presumption of administrative regularity, pursuant to which the governmental officers are deemed to have acted reasonably and according to law. Thus, in a post-assessment collection action brought by the Commissioner, the taxpayer has the burden of proving that the assessment is erroneous if he is to avoid its execution by collection. See, *e.g., United States* v. *Rexach,* 482 F. 2d 10, 15–18 (C.A. 1), certiorari denied, 414 U.S. 1039; *Lesser* v. *United States,* 368 F. 2d 306, 309–310 (C.A. 2) (*en banc*); *United States* v. *Lease,* 346 F. 2d 696, 698–701 (C.A. 2). The principle is equally, if not more, important under the Anti-Injunction Act, whose pur-

able. There, the court of appeals remanded an injunctive suit to the district court to consider whether the assessments were intended to coerce the taxpayers for improper purposes unrelated to the collection of taxes.

pose is to prevent judicial nullification of the collection of necessary tax revenues.

Nothing in the nature of a taxpayer-initiated injunctive action supports the conclusion of the court of appeals that the Commissioner should be compelled to come forward in such a proceeding with evidence that his assessment was made in good faith and is correct. The same presumptions of good faith and correctness of a tax assessment that are applicable in a civil collection proceeding are equally applicable, if not more so, in a suit to enjoin assessment or collection. As the Court observed in *Williams Packing,* "[t]o require more than good faith on the part of the Government would unduly interfere with a collateral objective of the [Anti-Injunction] Act—protection of the collector from litigation pending a suit for refund" (370 U.S. at 7–8). This congressional policy to channel tax litigation into the prescribed refund suits and Tax Court deficiency proceedings would be disserved by requiring the Commissioner to come forward in an injunctive action with evidence of his good faith and the accuracy of the assessment.

By forcing the government to come forward with such affirmative proof to justify its assessment, the court of appeals has not only inverted the burden of proof applicable in tax cases but has also shifted the forum for the resolution of tax disputes from the congressionally authorized forums to injunctive actions. Thus, the adjudication of this dispute has been taken from the Tax Court, where respondent has filed a

petition and bears the burden of proof pursuant to Rule 142(a) of the rules of that court,[18] to this injunctive suit in the district court. In so doing, it has undermined the purpose of the Anti-Injunction Act, which this Court has consistently recognized is to protect the government's need to assess and collect taxes as expeditiously as possible "and to require that the legal right to the disputed sums be determined in a suit for refund." *Enochs* v. *Williams Packing Co., supra,* 370 U.S. at 7. See also *Bob Jones University* v. *Simon, supra,* 416 U.S. at 736–737, and cases cited therein.

In sum, the burden under *Williams Packing* of proving that under no circumstances could the government prevail on the merits of its claim rests squarely on the taxpayer. If this case were considered in the absence of the Anti-Injunction Act, respondent, as the plaintiff in this equitable action, would bear the burden of proving that the Commissioner's assessment was legally incorrect. See, *e.g., United Transportation Union* v. *Michigan Bar,* 401 U.S. 576, 584; *United States* v. *W. T. Grant Co.,* 345 U.S. 629, 633. Here, however, where the policy of the Anti-Injunction Act comes into play, a far stronger case is presented for placing the burden of proof upon the taxpayer-plaintiff before a tax assessment can be enjoined. It would be anomalous to shift the

[18] Rule 142(a) of the Rules of Practice and Procedure of the United States Tax Court states: "The burden of proof shall be upon the petitioner [the taxpayer], except as otherwise provided by statute or determined by the Court; and except that, in respect of any new matter * * * pleaded in his answer, it shall be upon the respondent [the Commissioner]."

burden of proof to the Commissioner and thereby make the task of obtaining an injunction easier in the face of the applicability of the more stringent "under no circumstances" test of *Williams Packing,* which was designed to enforce the explicit statutory prohibition against injunctions. The policy of the Anti-Injunction Act can be implemented only if the taxpayer bears the burden of proving the applicability of the *Williams Packing* exception.

2. In holding that the Anti-Injunction Act requires a remand proceeding in which, after a simple denial of liability by the taxpayer, the government would be required to come forward with evidence of its good faith and of the correctness of its assessment, the court of appeals (Pet. App. B. 13A–15A) purported to follow *Pizzarello* v. *United States,* 408 F. 2d 579 (C.A. 2), and *Lucia* v. *United States,* 474 F. 2d 565 (C.A. 5) (*en banc*). Whether or not those cases fully conform to this Court's *Williams Packing* decision,[19] they do not hold that the government must prove the correctness of a tax assessment in order to defeat an action brought by the taxpayer to enjoin its assessment.

In *Pizzarello,* the Second Circuit relied upon *Williams Packing* in reversing the denial of an injunction against a gambling excise tax assessment which was based upon a five-year projection of wagering activity. That case, however, is distinguishable. There,

[19] Compare *James* v. *United States,* 510 F. 2d 860, 861 (C.A. 6), where the court expressly declined to follow *Pizzarello* and *Lucia,* stating that those cases "carved out further exceptions" to the Anti-Injunction Act.

the taxpayer had been indicted for operating a gambling establishment for two months. Because of this obvious disparity in the time periods, the court found "no proof in the record * * * that Pizzarello operated as a gambler for five years or that, even if he did so operate, his three-day average * * * represented his average daily business for the other 1,575 days" (408 F. 2d at 583). In determining the assessment to be excessive, the court noted that the Commissioner's determination that the taxpayer was engaged in gambling activity for five years was "unsupported either by the record or by affidavits" (*id.* at 584).[20]

Lucia similarly involved a gambling excise tax assessment based upon a projection of wagering activity. There, the taxpayer argued on appeal that he could demonstrate the error of projection employed by the government. In remanding the case to the district court for a factual determination of the taxpayer's allegation that the assessment was without foundation, the Fifth Circuit explicitly stated that "the taxpayer, Lucia, will have to prove his case upon remand, and the extent of our holding goes no further than to give him that opportunity" (474 F. 2d at 575; footnote omitted). Thus, contrary to the decision below, *Lucia* squarely places the burden of meeting the first aspect of the *Williams Packing* test—that the

[20] Compare, however, *Hamilton* v. *United States*, 309 F. Supp. 468 (S.D. N.Y.), affirmed *per curiam*, 429 F. 2d 427, certiorari denied, 401 U.S. 913, where the Second Circuit more recently affirmed the district court's denial of an injunction, although the assessment for wagering taxes, based on records covering three days, was projected over almost four years.

assessment is without any foundation—upon the taxpayer. In that respect, it conflicts with, rather than supports, the court of appeals.

Finally, unlike the taxpayers in either *Pizzarello* or *Lucia,* respondent has not shown that the Commissioner's assessment was without any foundation. The record in this case, to which we now turn, does not even suggest that respondent is likely to prevail, much less show that under no circumstances would the government prevail on the merits of its claim. In light of *Williams Packing,* there was, accordingly, no basis for the further remand proceeding the court of appeals ordered.

C. RESPONDENT HAS NOT MET THE BURDEN OF PROVING THAT UNDER NO CIRCUMSTANCES WOULD THE GOVERNMENT PREVAIL ON THE MERITS OF ITS CLAIM

1. The record shows that respondent introduced no evidence that would cast any doubt upon the Commissioner's good faith or the accuracy of the assessment. Indeed, the only evidence submitted by respondent to the district court during the first proceeding was a single affidavit, appended to his motion for a temporary restraining order, that simply alleged that he filed a tax return for 1971 which was accurate and that he had no income for 1970 (A. 20). This blanket denial of liability does not come even close to meeting the "under no circumstances" test of *Williams Packing.* As this Court held in *Snyder* v. *Marks, supra,* the mere allegation by a taxpayer that an amount has been "erroneously or illegally assessed" will not support injunctive relief where it "is claimed by the

proper public officers to be a tax" (109 U.S. at 192). See also *Dodge* v. *Osborn, supra,* 240 U.S. at 120–121; *Sherman* v. *Nash, supra,* 488 F. 2d at 1084–1085, n. 11. If such a general denial of liability were enough to avoid the prohibition of the Anti-Injunction Act, it would be a rare case in which the statute would apply.

Moreover, even after the Commissioner issued a notice of deficiency to respondent determining that he had unreported income from activities as a dealer in narcotics, respondent still failed to produce any evidence that would establish that the assessment was without foundation. At that juncture, respondent did not even come forward personally to deny the Commissioner's determination. Rather, one of his counsel merely told the district court that respondent had advised another of his counsel that the Commissioner's determination of income from narcotics dealing was false (A. 138). This twice-removed assertion does not even rise to the level of credible evidence, much less establish that the assessment was without foundation.

If, as we submit, the taxpayer has the burden of proving the applicability of the *Williams Packing* exception, respondent's failure to do should have led to the dismissal of the complaint. However, the court of appeals remanded the case to the district court for a further hearing because the filing of the complaint preceded the Commissioner's issuance of the notice of deficiency. In the court of appeals' view, "Shapiro could not deny in his complaint that he was a narcotics dealer * * * [b]ut in the circumstances, such allegations are fairly implicit in the complaint and, broadly construed, the complaint should have been sufficient to withstand the Government's motion to dismiss" (Pet. App. B 12A; footnote omitted).

But contrary to the court's implicit assumption, respondent's denial of the Commissioner's determination in his complaint would not have been sufficient to justify injunctive relief under the *Williams Packing* exception, or to compel the Commissioner to come forward with affirmative evidence in support of the assessment. Indeed, respondent had already denied the Commissioner's determination in his affidavit appended to his motion for a temporary restraining order (A. 20). Reaffirmation of that denial in the complaint cannot justify a different result. Whether these denials take the form of an affidavit or are incorporated in the allegations of a complaint, such self-serving statements will not meet the "under no circumstances" test of *Williams Packing*. Thus, in both instances there would be no basis for the further remand hearing the court of appeals ordered. The dismissal of respondent's complaint should have been affirmed.

2. The disruption to the orderly collection of taxes augured by the decision below has already been amply confirmed by the events which have occurred in the remand proceedings. Pursuant to the district court's order, the government submitted a detailed affidavit of the revenue agent showing the basis for the assessments against respondent. This affidavit demon-

strated that the assessments were made with regularity and in good faith, and that they were not without foundation. Respondent, on the other hand, has simply reiterated his denial of liability through new affidavits and submitted an additional affidavit of a person claiming to have held property for him abroad and to have transmitted to him $82,000 in 1971 and $35,000 in 1972. On this record respondent has not met his burden of proving under *Williams Packing* that "under no circumstances" would the government prevail on the merits of its claim.

Nevertheless, the district court has indicated that the revenue agent's affidavit was insufficient to warrant dismissal and that the government must produce for judicial examination its confidential informant and the information upon which the assessment was based (Tr. of Proceedings of November 12, 1974, pp. 71–72). At the final hearing held by the district court before this Court granted certiorari, the district court reaffirmed its conclusion that the revenue agent's affidavit did not "provide a rational factual basis for the assessment and levy in this case, which would be sufficient to oust this court's jurisdiction [under the Anti-Injunction Act]" (Tr. 2–3). As a result, it ordered that the parties be permitted to engage in pre-trial discovery (Br. in Opp. App. C 3a–4a).

Thus, the effect of the decision below has been to allow the simple denial of liability by a taxpayer to put the Commissioner's assessment "on trial" at a protracted injunctive proceeding in which the government would be forced to prove its good faith and

the facts upon which its assessment was based. Such a significant deviation from settled precedent contravenes the congressional policy that disputes between taxpayers and the Treasury are to be adjudicated in either a refund suit or in a Tax Court proceeding. Moreover, it is squarely at odds with this Court's consistent recognition that the purpose of the Anti-Injunction Act is to protect the government's need to collect taxes as expeditiously as possible. If permitted to stand, the decision of the court of appeals would, like the repudiated decisions of an earlier day, "simply revive the evisceration of the Act." *Bob Jones University* v. *Simon, supra,* 416 U.S. at 745–746.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed and the case remanded to the district court with directions to dismiss the complaint.

Respectfully submitted.

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APPENDIX

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 6211. DEFINITION OF A DEFICIENCY.

(a) [as amended by Sec. 101(f)(1), Tax Reform Act of 1969, Pub. L. 91-172, 83 Stat. 487, 524] *In General.*—For purposes of this title in the case of income, estate, gift, and excise taxes, imposed by subtitles A and B, and chapter 42, the term "deficiency" means the amount by which the tax imposed by subtitle A or B or chapter 42 exceeds the excess of—

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in subsection (b)(2), made.

* * * * *

SEC. 6212. NOTICE OF DEFICIENCY.

(a) [as amended by Sec. 89(b), Technical Amendments Act of 1958, Pub. L. 85-866, 72 Stat. 1606, 1665 and Sec. 101(j)(40), Tax Reform Act of 1969, Pub. L. 91-172, 83 Stat. 487, 530] *In General.*—If the Secretary or his delegate determines that there is a deficiency in respect of any tax imposed by subtitle A or B or chapter 42, he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

* * * * *

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) [as amended by Sec. 101(j)(42), Tax Reform Act of 1969, Pub. L. 91-172, 83 Stat. 487, 530] *Time for Filing Petition and Restriction on Assessment.*—Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day) the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B or chapter 42 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

* * * * *

SEC. 6331. LEVY AND DISTRAINT.

(a) *Authority of Secretary or Delegate.*—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) [as amended by Sec. 104(a), Federal Tax Lien Act of 1966, Pub. L. 89-719, 80 Stat. 1125, 1135] *Seizure and Sale of Property.*—The term "levy" as used in this title includes the power of distraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

* * * * *

SEC. 6861. JEOPARDY ASSESSMENTS OF INCOME, ESTATE, AND GIFT TAXES.

(a) *Authority for Making.*—If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213 (a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law),

and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

(b) *Deficiency Letters.*—If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 6212(a), then the Secretary or his delegate shall mail a notice under such subsection within 60 days after the making of the assessment.

* * * * *

SEC. 7421. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) [as amended by Sec. 110(c), Federal Tax Lien Act of 1966, Pub. L. 89-719, 80 Stat. 1125, 1144] *Tax.*—Except as provided in sections 6212 (a) and (c), 6213(a), and 7426(a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

* * * * *

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